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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILLIAM CAPUT, an individual, on
behalf of himself and others similarly
situated

PLAINTIFF,

v.

NTT SECURITY (US) INC.; and
DOES 1 thru 50, inclusive

DEFENDANTS.

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures, 15 U.S.C. § 1681b, et seq.;
2. Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization, 15 U.S.C. § 1681b, et seq.;
3. Penalties Pursuant to California Labor Code §201-203

DEMAND FOR A JURY TRIAL

1 Plaintiff WILLIAM CAPUT ("Plaintiff"), on behalf of himself and all others
2 similarly situated, alleges on information and belief, except for his own acts and
3 knowledge, the following:

4 I.
5 INTRODUCTION

6 1. Defendant NTT SECURITY (US) INC. ("Defendant") is a Connecticut
7 Corporation and at all relevant times mentioned herein conducted and continues to
8 conduct substantial and regular business throughout California.

9 2. Defendant is a specialized security company providing cybersecurity.

10 3. Plaintiff applied, was hired, and performed work for Defendant in
11 California. Upon information and belief, during the application process, Plaintiff
12 filled out Defendant's standard Notice of Procurement of Consumer/Investigative
13 Report form ("disclosure and authorization form") permitting Solutionary to obtain
14 a consumer report verifying Plaintiff's background and experience for Defendant.

15 4. Upon information and belief, Solutionary obtained such reports in 2016
16 and 2017, at a minimum.

17 5. Upon Plaintiff's separation from Defendant's employ, Defendant failed
18 to timely pay all wages due.

19 6. Plaintiff now brings this Class Action on behalf of himself and three
20 proposed classes defined as:

21 "all persons who are employed in the United States who filled
22 out Defendant's disclosure and authorization form that included
23 an authorization and a liability release clause at any time during
24 the period beginning two (2) years prior to the filing of this
25 Complaint and ending on the date as determined by the Court."
(the "Proposed 2 Year FCRA Class")

26 "all persons who are employed in the United States who filled
27 out Defendant's disclosure and authorization form that included
28 an authorization and a liability release clause at any time during
the period beginning five (5) years prior to the filing of this

1 Complaint and ending on the date as determined by the Court.”
 2 (the “Proposed 5 Year FCRA Class)

3 “all persons who were employed by Defendant in the State of
 4 California who have since separated from Defendant’s
 5 employment beginning three (3) years prior to the filing of this
 6 Complaint and ending on the date as determined by the Court.”
 7 (the “Proposed Waiting Time Penalty Class”)

8 **II.**

9 **JURISDICTION AND VENUE**

10 7. The Court has jurisdiction over Plaintiff’s federal claims pursuant to 28
 11 U.S.C. §1331 and 15 U.S.C. §1681 of the Fair Credit Reporting Act 15 U.S.C. §1681
 12 *et seq.* (“FCRA”). This Court has supplemental jurisdiction over Plaintiff’s state
 13 law claims pursuant to 28 U.S.C §1367.

14 8. Venue is proper in this district pursuant to 28 U.S.C. §1391(d) because
 15 Defendant is subject to personal jurisdiction in this district, maintains offices in this
 16 district, and the actions at issue took place in this district.

17 **III.**

18 **THE PARTIES**

19 **A. PLAINTIFF**

20 9. Plaintiff applied, was hired and performed work for Defendant in
 21 Cypress, California from January 14, 2013 to August 3, 2018.

22 10. During the application process with Defendant, upon information and
 23 belief, Plaintiff was required to fill out Defendant’s standard form permitting
 24 Defendant to obtain a consumer report verifying Plaintiff’s background and
 25 experience.

26 11. Plaintiff was confused by the standard disclosure and authorization
 27 form and did not understand that Defendant would be requesting a “consumer
 28 report” as defined in the FCRA.

12. Nonetheless, upon information and belief, Defendant then secured
 consumer reports from pertaining to Plaintiff in February 2016 and February 2017.

1 B. DEFENDANT

2 13. Defendant is a Connecticut Corporation. At all times relevant herein,
3 Defendant conducted and continues to conduct business throughout the State of
4 California including hiring and employees such as Plaintiff.

5 14. Defendant's entity address listed with the California Secretary of State
6 is 9420 Underwood Ave, Omaha, NE 68114.

7 15. Defendant requires Plaintiff and all other persons similarly situated to
8 fill out Defendant's standard form permitting Defendant to obtain a consumer report
9 verifying the applicant's background and experience.

10 16. With respect to the events at issue in this case, Defendant is liable for
11 the violations of law described in this Complaint.

12 17. Plaintiff is informed and believes and thereon allege that each
13 Defendant acted in all respects pertinent to this action as the agent of the other
14 Defendant, and/or carried out a joint scheme, business plan or policy in all respects
15 pertinent hereto, and/or the acts of each Defendant are legally attributable to the
16 other Defendant.

17 IV.

18 NATURE OF THE ACTION

19 18. The FCRA provides individuals with a number of rights. Specifically,
20 pertaining to employment-related background checks referred to as "consumer
21 reports", the FCRA provides that a prospective employee must give valid consent
22 to the background check. The FCRA requires a signed authorization and disclosure
23 from the applicant, sometimes referred to as a "consent" form.

24 19. The authorization and disclosure form must be executed and signed by
25 the applicant prior to an employer requesting or conducting a background check.
26 Importantly, no extraneous information can be attached or included on the consent
27 form. The authorization and disclosure must stand-alone.

28 20. In violation of 15 U.S.C. §1681b(b)(2)(A)(i), Defendant has unlawfully

1 inserted extraneous provisions into its standard forms purporting to grant Defendant
2 the authority to obtain and use consumer report information for employment
3 purposes for Plaintiff and all Proposed Class Members. The FCRA prohibits this
4 practice and requires that forms granting the authority to access and use consumer
5 report information for employment purposes be stand-alone forms, and not include
6 any additional information or agreements. Defendant's decision to include
7 extraneous information in its disclosure and authorization forms is contrary to the
8 plain language of the statute and unambiguous regulatory guidance from the Federal
9 Trade Commission ("FTC").

10 21. In violation of 15 U.S.C. § 1681b(b)(2)(A)(ii), Defendant has obtained
11 consumer reports regarding Plaintiff and all Proposed Class Members without proper
12 authorization because the authorization and disclosure forms failed to comply with
13 the requirements of the FCRA.

14 22. The inclusion of the liability waiver in Defendant's disclosure and
15 authorization forms invalidates the purported consent and also triggers statutory
16 damages under the FCRA in the amount of up to \$1,000 for each applicant that
17 Defendant obtained a consumer report without a facially valid, executed
18 authorization, as well as punitive damages, equitable relief, and attorneys' fees and
19 costs.

20 23. In addition, Defendant's failure to secure signed disclosure and
21 authorization forms invalidates the purported consent and also triggers statutory
22 damages under the FCRA in the amount of up to \$1,000 for each applicant that
23 Defendant obtained a consumer report without a facially valid, executed
24 authorization, as well as punitive damages, equitable relief, and attorneys' fees and
25 costs.

26 V.

27 **FACTUAL ALLEGATIONS**

28 24. Plaintiff applied to work for Defendant in California. In connection

1 with his employment application with Defendant, upon information and belief,
2 Plaintiff was required to fill out Defendant's standard disclosure and authorization
3 form permitting Defendant to obtain a consumer report verifying Plaintiff's
4 background and experience. Plaintiff was confused by the standard disclosure and
5 authorization form and did not understand that Defendant would be requesting a
6 "consumer report" as defined in the FCRA and would continue to request such
7 reports throughout his employment. Nonetheless, upon information and belief,
8 Defendant then secured consumer reports in February 2016 and February 2017.

9 25. Upon information and belief, Defendant's standard disclosure and
10 authorization form permitting Defendant to obtain a consumer report verifying
11 Plaintiff's background and experience was not limited just to the authorization, but
12 contained extraneous information including a release of liability.

13 26. Defendant's standard disclosure and authorization form states: "I
14 hereby release Solutionary, Inc., and any and all persons, business entities and
15 governmental agencies, whether public or private, from any and all liability, claims
16 and/or demands, of whatever kind, to me, my heirs or others making such claim or
17 demand on my behalf, for procuring, selling, providing, brokering and/or assisting
18 with the compilation or preparation of the consumer report and/or investigative
19 consumer report hereby authorized."

20 27. Upon information and belief, Defendant required all applicants to
21 complete the same standard disclosure and authorization form permitting Defendant
22 to obtain a consumer report verifying the applicant's background and experience.

23 28. The inclusion of this extraneous information in Defendant's standard
24 disclosure and authorization form permitting Defendant to obtain a consumer report
25 verifying an applicant's background and experience violates the FCRA, 15 U.S.C. §
26 1681, *et seq.*

27 29. Under the FCRA, it is unlawful to procure a consumer report or cause
28 a consumer report to be procured for employment purposes, unless:

1 (i) a clear and conspicuous disclosure has been made in writing to
2 the consumer at any time before the report is procured or causes
3 to be procured, in a document that consists solely of the
disclosure, that a consumer report may be obtained for
employment purposes; and

4 (ii) the consumer has authorized in writing (which authorization may
5 be made on the document referred to in clause (i)) the
procurement of the report.

6 15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii)

7 30. Although the disclosure required by clause (i) and the authorization
8 required by clause (ii) may be combined in a single document, the FTC has warned
9 that the form should not include any extraneous information. Further, the FTC has
10 also specifically warned that the inclusion of such a waiver in a disclosure form will
11 violate Section 604(b)(2)(A) of the FCRA [15 U.S.C. §§ 1681b(b)(2)(A), which
12 requires that a disclosure consist solely of the disclosure that a consumer report may
13 be obtained for employment purposes.

14 31. This requirement is meant to prevent the consumer from being
15 distracted by other extraneous information side-by-side with this very important
16 disclosure. The disclosure shall not be diminished in importance by including
17 unrelated information. The disclosure must be clear and conspicuous,
18 understandable and noticeable.

19 32. By including extraneous information in its standard form permitting
20 Defendant to obtain a consumer report verifying the applicant's background and
21 experience, Defendant's conduct is contrary to the plain language of the statute.
22 Defendant willfully disregarded the FTC's regulatory guidance and violated 15
23 U.S.C. §§ 1681b(b)(2)(A).

24 33. Defendants' failure to provide a clear disclosure, in a document that
25 consists solely of the disclosure, deprived Plaintiff and others similarly situated of
26 the right to information and the right to privacy guaranteed by 15 U.S.C. section
27 1681b(n)(2)(A)(i)-(ii). Because Defendant unlawfully included extraneous
28 information in its standard form permitting Defendant to obtain a consumer report

1 verifying Plaintiff's background and experience, Plaintiff was confused by the
2 standard form document and did not understand that Defendant would be requesting
3 a "consumer report" as defined in the FCRA.

4 34. Defendant willfully failed to pay wages and compensation, when
5 Plaintiff and all Proposed Waiting Time Penalty Class Members quit or were
6 discharged. This failure was willful, without legal justification, and interfered with
7 Plaintiff's and Class Members' rights.

8 VI.

9 THE CLASSES

10 35. Plaintiff brings the First and Second Causes of Action on behalf of
11 himself and all others similarly situated as a Class Action pursuant to Rule 23(a) and
12 23(b)(3) of the F.R.C.P. Plaintiff satisfies the requirements of Rule 23(a) and (b)(3)
13 for the prosecution of this action as a class action. As to the first and second causes
14 of action, Plaintiff seeks to represent two Classes composed of and defined as
15 follows:

16 "all persons who are employed in the United States who filled out
17 Defendant's disclosure and authorization form that included an
18 authorization and a liability release clause at any time during the
19 period beginning two (2) years prior to the filing of this Complaint
20 and ending on the date as determined by the Court." (the "Proposed
2 Year FCRA Class")

21 "all persons who are employed in the United States who filled out
22 Defendant's disclosure and authorization form that included an
23 authorization and a liability release clause at any time during the
24 period beginning five (5) years prior to the filing of this Complaint
25 and ending on the date as determined by the Court." (the "Proposed
5 Year FCRA Class")

26 36. Plaintiff brings the Third Cause of Action on behalf of himself and all
27 others similarly situated as a Class Action pursuant to Rule 23(a) and 23(b)(3) of the
28 F.R.C.P. Plaintiff satisfies the requirements of Rule 23(a) and (b)(3) for the

1 prosecution of this action as a class action. As to the third cause of action, Plaintiff
2 seeks to represent one Class composed of and defined as follows:

3 “all persons who were employed by Defendant in the State of California
4 who have since separated from Defendant’s employment beginning
5 three (3) years prior to the filing of this Complaint and ending on the
6 date as determined by the Court.” (the “Proposed Waiting Time Penalty
Class”)

7 37. Plaintiffs reserve the right to amend or modify the Class descriptions
8 with greater specificity or further division into subclasses or limitation to particular
9 issues.

10 38. Defendant, as a matter of corporate policy, practice, and procedure, in
11 violation of 15 U.S.C. §1681, et seq., intentionally, knowingly, and willfully,
12 engaged in a practice whereby Defendant uniformly, unfairly, and unlawfully
13 instituted a policy of obtaining consumer reports without valid authorization to do
14 so.

15 39. Defendant uniformly violated the rights of the Proposed FCRA Class
16 by violating the FCRA 15 U.S.C. §1681b(b)(2)(A)(i)-(ii) by unlawfully obtaining
17 consumer reports without first obtaining valid signed authorization and disclosure
18 forms.

19 40. Defendant, as a matter of corporate policy, practice, and procedure, in
20 violation of Cal. Labor Code §203 intentionally, knowingly, and willfully, engaged
21 in a practice whereby Defendant uniformly, unfairly, and unlawfully failed to pay
22 all wages due upon the Proposed Waiting Time Penalty Class members’ separation
23 from Defendant.

24 41. This class action on behalf of members of the Proposed Classes meets
25 the statutory prerequisites for the maintenance of a class action as set forth in Rule
26 23(a) and 23(b)(3) of the F.R.C.P.

27 A. Numerosity

28 42. The Proposed Classes are so numerous that joinder of all class members

1 is impracticable. While the precise number of members of the Classes has not been
2 determined at this time, Plaintiff is informed and believes that Defendant, during the
3 relevant period, had applicants and former employees that numbered well over
4 1,000.

5 43. Plaintiff alleges that Defendant's records will provide information as to
6 the number of all members of the Proposed Classes.

7 B. Commonality

8 44. There are questions of law and fact common to the Proposed Classes
9 that predominate over any questions affecting only individual members of the
10 Classes. These common questions of law and fact include, without limitation:

11 a. As to the two proposed FCRA Classes:

- 12 i. Whether Defendant required members of the Proposed Class to
13 fill out a standard application form permitting Defendant to
14 obtain a consumer report verifying the applicant's background
15 and experience;
- 16 ii. Whether Defendant's standard application form permitting
17 Defendant to obtain a consumer report verifying the applicant's
18 background and experience complies with 15 U.S.C. §1681, et
19 seq.;
- 20 iii. Whether Defendant violated 15 U.S.C. §1681, et seq. by
21 including extraneous information in its standard application form
22 permitting Defendant to obtain a consumer report verifying the
23 applicant's background and experience;
- 24 iv. Whether Defendant violated 15 U.S.C. §1681, et seq. by failing
25 to obtain signatures on its disclosure and authorization form;
- 26 v. Whether Defendant violated 15 U.S.C. §1681, et seq. by
27 procuring consumer reports without valid authorization; and
- 28 vi. Whether Defendant's violations of 15 U.S.C. §1681, et seq. were

willful.

b. As to the Proposed Waiting Time Penalty Class:

i. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class Member's employment with Defendant terminated;

C. Typicality

45. The claims of the named Plaintiff are typical of the claims of the members of the Proposed Classes.

46. Plaintiff is a member of the Proposed Classes. Plaintiff was an applicant and filled out Defendant's standard form permitting Defendant to obtain a consumer report verifying an applicant's background and experience during his application process. Plaintiff was not paid all wages timely upon his separation from Defendant's employment. Plaintiff was subjected to the same unlawful practices as other members of the Proposed Classes.

47. Plaintiff and other members of the Proposed Class suffered the same injuries and seek the same relief.

D. Adequacy of Representation

48. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class.

49. Counsel for Plaintiff are competent and experience in litigation large complex consumer and wage and hour class actions.

E. Predominance and Superiority of a Class Action

50. A class action is superior to other available means for fair and efficient adjudication of this controversy. Individual joinder of all members of the Proposed Classes is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Proposed Classes.

52. Class action treatment will allow a large number of similarly situated agricultural employees to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, the monetary amounts due to many individual class members are likely to be relatively small, and the burden and expense of individual litigation would make it difficult or impossible for individual members of the members of the Proposed Classes to seek and obtain relief. Moreover, a class action will serve an important public interest by permitting employees harmed by Defendant's unlawful practices to effectively pursue recovery of the sums owed to them.

FIRST CAUSE OF ACTION

FCRA

(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED FCRA
CLASSES AGAINST ALL DEFENDANTS)

54. Defendant violated 15 U.S.C. §1681b(b)(2)(A)(i) of the FCRA by including extraneous information in its standard application form permitting it to obtain a consumer report verifying an applicant's background and experience that

1 Defendant required Plaintiff and all other members of the Proposed Class to fill out
2 as a condition of seeking employment with Defendant.

3 55. The violations of the FCRA were willful. Defendant knew that its
4 standard application form permitting it to obtain a consumer report verifying an
5 applicant's background and experience should not include extraneous information
6 that is prohibited by the FCRA, and acted in deliberate disregard of its obligations
7 and the rights of Plaintiff and all other members of the Proposed Class under 15
8 U.S.C. § 1681b(b)(2)(A)(i).

9 56. Plaintiff and all other members of the Proposed Classes are entitled to
10 statutory damages of not less than \$100 and not more than \$1,000 for every violation
11 of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

12 57. Plaintiff and all other members of the Proposed Classes are also entitled
13 to punitive damages for these violations, pursuant to 15 U.S.C. §1681n(a)(2).

14 58. Plaintiff and all other members of the Proposed Classes are further
15 entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C.
16 §1681n(a)(3).

17 **VIII.**

18 **SECOND CAUSE OF ACTION**

19 **FOR FAILURE TO OBTAIN PROPER AUTHORIZATION IN VIOLATION**

20 **OF THE FCRA**

21 **[15 U.S.C. § 1681b(b)(2)(A)(II)]**

22 **(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED FCRA**

23 **CLASSES AGAINST ALL DEFENDANTS)**

24 59. Plaintiff, and the other members of the Proposed Classes, realleges and
25 incorporates by this reference, as though fully set forth herein, the prior paragraphs
26 of this Complaint.

27 60. Defendant violated the FCRA by procuring consumer reports relating
28 to Plaintiff and all other members of the Proposed Classes without proper

1 authorization. See 15 U.S.C. § 1681b(b)(2)(A)(ii).

2 61. The violations of the FCRA were willful. Defendant acted in deliberate
3 disregard of its obligations and the rights of Plaintiff and all other members of the
4 Proposed Classes under 15 U.S.C. § 1681b(b)(2)(A)(ii).

5 62. Plaintiff and all other members of the Proposed Classes are entitled to
6 statutory damages of not less than \$100 and not more than \$1,000 for every violation
7 of the FCRA, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

8 63. Plaintiff and all other members of the Proposed Classes are also entitled
9 to punitive damages for these violations, pursuant to 15 U.S.C. § 1681n(a)(2).

10 64. Plaintiff and all other members of the Proposed Classes are further
11 entitled to recover their costs and attorneys' fees, pursuant to 15 U.S.C. §
12 1681n(a)(3).

13 **IV.**

14 **THIRD CAUSE OF ACTION**
15 **FOR WAITING TIME PENALTIES**
16 **[LABOR CODE §201-203]**

17 **(BY PLAINTIFF AND ALL MEMBERS OF THE PROPOSED WAITING**
18 **TIME PENALTY CLASS AGAINST ALL DEFENDANTS)**

19 65. Plaintiff, and the other members of the Proposed Class, realleges and
20 incorporates by this reference, as though fully set forth herein, the prior paragraphs
21 of this Complaint.

22 66. Numerous members of the Proposed Class including the Plaintiff are
23 no longer employed by Defendant. They were either fired or quit Defendant's
24 employ.

25 67. Defendant has failed to pay Plaintiff and all members of the Proposed
26 Class their final wages in compliance with Labor Code §203.

27 68. In addition, Defendant's failure to pay wages, as alleged above, was
28 willful in that Defendant knew wages to be due but failed to pay them, thus entitling

1 Plaintiff and the Proposed Class to penalties under Labor Code § 203, which
2 provides that an employee's wages shall continue as a penalty until paid for a period
3 of up to thirty (30) days from the time they were due.

4 69. Defendant has failed to pay Plaintiff and others a sum certain at the time
5 of termination or within seventy-two (72) hours of their resignation, and have failed
6 to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor
7 Code § 203, Plaintiff and the Proposed Class are entitled to a penalty in the amount
8 of Plaintiff's and the Proposed Class Members' daily wage multiplied by thirty (30)
9 days.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly
12 and severally, as follows:

13 1. On behalf of the Proposed FCRA Classes:

14 A) That the Court certify the First and Second Causes of Action
15 asserted by the Proposed Classes as a Class Action pursuant to
16 Fed. R. Civ. Proc. 23(b)(2) and/or (3);

17 B) A determination and judgment that Defendant willfully violated 15
18 U.S.C. § 1681(b)(2)(A)(i) and(ii) of the FCRA by improperly
19 including extraneous information in its standard application form
20 permitting it to obtain a consumer report verifying an applicant's
21 background and experience and by obtaining consumer reports on
22 Plaintiff and all other members of the Proposed Class without
23 having proper authorization to do so;

24 C) Pursuant to 15 U.S.C. § 1681n(a)(1)(A), an award of statutory
25 damages to Plaintiff and all other members of the Proposed Class
26 in an amount equal to \$1,000 for Plaintiff and all other members
27 of the Proposed Class for Defendant's willful violation of the
28 FCRA;

- 1 D) Pursuant to 15 U.S.C. § 1681n(a)(2), an award of punitive damages
2 to Plaintiff and all other members of the Proposed Class;
3 E) An award for costs of suit and reasonable attorneys' fees pursuant
4 to 15 U.S.C. § 1681n(a)(3); and,
5 F) Such other and further relief as the Court deems just and equitable.
6 2. On behalf of the Proposed Waiting Time Penalty Class
7 A) That the Court certify the Third Cause of Action asserted by the
8 Proposed Classes as a Class Action pursuant to Fed. R. Civ. Proc.
9 23(b)(2) and/or (3);
10 B) For penalties pursuant to Labor Code § 203 for all employees who
11 were terminated or resigned equal to their daily wage times thirty
12 (30) days;
13 C) An award for costs of suit and reasonable attorneys' fees as
14 appropriate; and,
15 D) Such other and further relief as the Court deems just and equitable
16

17 **DEMAND FOR JURY TRIAL**

18 DATED: November 6, 2018

KINGSLEY & KINGSLEY, APC

19 By: 

20 Eric B. Kingsley

21 Kelsey M. Szamet

22 Attorneys for Plaintiff
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